

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

KENNETH NEWKIRK,
Plaintiff,

V.

HAROLD CLARKE, et al.,

Defendants.

Civil Action No. 7:23cv00710

OPINION

By: Robert S. Ballou

United States District Judge

Plaintiff Kenneth Newkirk, a Virginia inmate proceeding *pro se*, filed this civil action under 42 U.S.C. § 1983 against multiple defendants, raising many of the same misjoined causes of action that he has previously raised in this court in *Newkirk v. Clarke*, No. 7:23cv00394, and *Newkirk v. Fleming*, No. 7:23cv00623. Although he has had more than three prior actions dismissed as frivolous or for failure to state a claim upon which relief may be granted,¹ he did not prepay the applicable filing fee when he mailed in his complaint.

Under the three strikes provision of the Prison Litigation Reform Act, Newkirk may not proceed with a civil rights action unless he either prepays the entire filing fee or credibly shows that he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). He has not paid the filing fee, nor has he alleged facts constituting imminent danger of physical injury. The proper procedure is for the district court to dismiss the complaint without prejudice when the plaintiff is ineligible to proceed *in forma pauperis* and fails to pay the full filing fee up front.

¹ See *Newkirk v. Shaw, et al.*, No. 3:14CV171-HEH, 2014 WL 6712888, at *6 (E.D. Va. Nov. 26, 2014); *Newkirk v. Shaw*, No. 3:14CV426-HEH, 2014 SL 4161991, at *3 (E.D. Va. Aug. 19, 2014); *Newkirk v. Cir. Ct. of the City of Hampton*, No. 3:14CV372-HEH, 2014 WL 4072212, at *3 (E.D. Va. Aug. 14, 2014); *Newkirk v. Lerner*, No. 3:13CV364-HEH, 2014 WL 587174, at *5 (E.D. Va. Feb. 14, 2014); *Newkirk v. Chappell*, No. 3:13CV73-HEH, 2013 WL 5467232, at *3 (E.D. Va. Sept. 30, 2013).

Further, Newkirk's complaint appears to violate Rules 18 and 20 of the FEDERAL RULES OF CIVIL PROCEDURE, as discussed in the opinions issued in each of the two cases referenced in the first paragraph of this opinion. Newkirk is advised that continued filing of misjoined claims and continued filing of complaints without the required prepayment of filing fees may result in issuance of an order to show cause why a prefiling injunction or other sanctions should not be entered against him by the court.

Because Newkirk has not prepaid his filing fee as required by 28 U.S.C. § 1915(g), I will dismiss his complaint without prejudice. An appropriate order will be entered.

Enter: December 18, 2023

/s/ Robert S. Ballou

Robert S. Ballou
United States Magistrate Judge